

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

<p>3FORM, INC., Plaintiff,</p> <p>vs.</p> <p>SUNSET PLAZA, LLC., ELITE PROPERTY MANAGEMENT, LLC., and METRO PACIFIC DEV., INC., Defendants.</p>	<p>MEMORANDUM DECISION AND ORDER DENYING WITHOUT PREJUDICE PLAINTIFF'S MOTION FOR A TRO AND PRELIMINARY INJUNCTION</p> <p>Case No. 2:10-CV-856 TS</p>
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Plaintiff seeks a Temporary Restraining Order and a Preliminary Injunction to enjoin Defendant Sunset Plaza LLC (Sunset) from further pursuit of a second-filed action in California state court. The facts of the filing of the two parallel cases are fully set forth in this Court's February 2, 2011 Memorandum Decision and Order Denying Motion to Dismiss and need not be repeated herein.

Plaintiff contends that if Sunset is not enjoined from proceeding with the second-filed action, both actions will proceed in parallel with the accompanying risks of inconsistent rulings and waste of resources. Sunset responds with many of the same arguments it

made in connection with its Motion to Dismiss, including that this district is an improper forum. In its Reply, Plaintiff states that it has moved to dismiss the second-filed case and that its motion is set to be heard by the California Court on April 4, 2011.

The elements a party must show to be entitled to a preliminary injunction are the same it must show for a TRO. Those elements are:

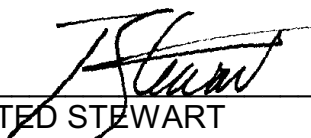
(1) he or she will suffer irreparable injury unless the injunction issues; (2) the threatened injury outweighs whatever damage the proposed injunction may cause the opposing party; (3) the injunction, if issued, would not be adverse to the public interest; and (4) there is a substantial likelihood of success on the merits.¹

Plaintiff herein has not shown it will suffer irreparable injury unless the injunction issues because it remains possible that the California Court will grant Plaintiff's motion to dismiss or transfer venue of the second-filed action, or even stay that action. As a result, this Court will deny the Motion for an injunction without prejudice. It is therefore

ORDERED that Plaintiff's Motion for a TRO and a Preliminary Injunction (Docket No. 20) is DENIED WITHOUT PREJUDICE.

DATED March 14, 2011.

BY THE COURT:



TED STEWART
United States District Judge

¹*Nova Health Systems v. Edmondson*, 460 F.3d 1295, 1298 (10th Cir. 2006) (quotation marks and citations omitted).